

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

JUSTICE AND UNITY FOR THE SOUTHERN
TIER and MEGAN POND

Plaintiffs,

VERIFIED CLASS ACTION
COMPLAINT

-against-

DAVID HARDER, Broome County Sheriff,

Defendant,

Plaintiffs, Justice and Unity for the Southern Tier and Megan Pond by their undersigned counsel Legal Services of Central New York, hereby alleges:

INTRODUCTION

1. All in-person visitations have been cancelled at the Broome County Correctional Facility (Jail) since the start of the COVID-19 pandemic. In place of prisoners being able to see their families and hug their children, Sheriff David Harder provides them one free five-minute phone call per week.
2. Video-visits and phone calls are also available to prisoners at the Jail but are subject to excessive costs and fees making them effectively unavailable to a large number of prisoners.
3. For prisoners and their families in-person visitation is tremendously important. Regular in-person visitation reduces recidivism and increases the safety and security of correctional facilities.

4. The New York State Department of Corrections and Community Supervision (DOCCS) has been safely allowing in-person visitation for families of prisoners at all of their facilities for almost two years. Following DOCCS' lead many of New York's local correctional facilities have modified their visitation procedures to allow in-person visitation while ensuring the safety of everyone at the correctional facility.

5. Despite the numerous options available for Defendant Harder to safely resume in-person visitations he has refused to lift the blanket prohibition.

6. Plaintiffs brings this action challenging Defendant Harder's unconstitutional blanket prohibition on in-person visitation. They seek an order enjoining Defendant Harder from continuing this unconstitutional policy, and declaring the policy violates the New York State Constitution.

JURISDICTION AND VENUE

7. Plaintiffs have made no prior application for the relief requested herein.

8. Venue is proper in Broome County pursuant to Sections 503(a) and 506(b) of the Civil Practice Laws and Rules, as the principal offices of the Broome County Sheriff's Office are located in Broome County, where Defendant made the determination at issue, and where all material events took place.

PARTIES

9. Plaintiff Justice and Unity for the Southern Tier (JUST) is a not-for-profit 501(c)3 organization based in Broome County, New York.

10. Plaintiff Megan Pond is a resident of Broome County. She is the partner of J.L. a pre-trial detainee being held at the Broome County Jail. Ms. Pond has not seen J.L. in person since he became incarcerated at the Jail.

11. Defendant David Harder is sued in his official capacity as the Sheriff for Broome County. In that capacity he is responsible for overseeing and directing all aspects of the Sheriff's Office including the corrections division. Sheriff Harder is responsible for creating and implementing the policies challenged in this action.

FACTS

Broome County Jail's Visitation Policies

12. The Jail is a 536-bed correctional facility in the Town of Dickinson, which operates under the control of Defendant Sheriff David Harder.

13. As of April 2022, the average daily population at the Jail was 318 prisoners, of whom only forty-two were sentenced.¹

14. The Jail maintains a visitation schedule based on the prisoners' housing classification. Visitation is offered Monday-Friday at varying times between 9 a.m. to 10 p.m. There is no weekend visitation at the Jail.²

15. All visits at the Jail are contact visits with the exception of visits that happen within the first 24 hours of admission. Those initial visits are limited to thirty minutes and are non-contact visits.³

16. All visitors are required to complete a registration form and sign in prior to visiting a prisoner. Visitors then sit in the waiting area until their name is called. Once their name is called visitors go through a metal detector. They are then inspected and searched by an officer

¹Jail Population in New York State, New York State Division of Criminal Justice Services, at 3, (5/4/22) available at: https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf

²Broome County Jail Inmate Handbook, (Inmate Handbook) at 15-16, June 30, 2020, available at: <http://www.justicest.com/wp-content/uploads/2020/07/Handbook-foil-7-2-20.pdf>

³ Inmate Handbook at 19.

with a handheld metal detector. Finally, visitors directed by corrections staff to the applicable visiting area.

17. There are two visitation areas at the Jail. One is used for contact visits and another is used for non-contact visits.

18. On information and belief there are five non-contact visitation rooms. The prisoner and visitor enter through doors on separate sides of the room. In each secure non-contact visitation room, the prisoner and visitor are physically separated by a plexiglass partition. The partition goes from the center of a table in the middle of the room to the ceiling. There are small metal vents on each side of the partition to allow the prisoner and visitor to talk. During non-contact visitations prisoners and visitors never have direct physical contact.

19. On information and belief, the contact visitation area is a large room with five rows of built-in tables. A one-and-a-half-foot high plexiglass partition runs through the middle of the tables to separate the prisoner and visitor.

20. Visitors sit in movable plastic chairs and prisoners sit on fixed stools on the other side of the table approximately two feet away from their visitor. On information and belief, each row in the visitation areas has five affixed stools for the prisoners.

21. In-person contact visits at the Jail can last for up to one hour. Prisoners receive two visits per week: one hour of visitation during the afternoon hours and one hour of visitation during the evening hours.⁴

Defendant Harder's Cancellation of All In-Person Visitation

22. In March 2020 Defendant Harder cancelled all in-person visitation in response to the COVID-19 pandemic. Defendant Harder inexplicably claimed the Broome County Jail is one of

⁴ Inmate Handbook at 16.

the safest places a person can be to protect them from COVID-19.⁵ Shortly thereafter, prisoners alleged the Jail was not adequately protecting them against the virus.⁶

23. On information and belief, corrections officers at the Jail still routinely fail to wear masks or wear them improperly. As of April 2021, only approximately half of the corrections staff were vaccinated.⁷ Defendant Harder incorrectly asserted he does not have the authority to mandate his staff receive the vaccine.

24. The Jail only tests prisoners who exhibit symptoms of COVID-19.⁸ Therefore, a prisoner who has come in close contact with someone with COVID-19 will not necessarily be tested.⁹

25. On information and belief Defendant Harder has no plans to mandate vaccination for corrections staff or implement a more robust testing regime.

26. In place of in-person visitation Defendant Harder has offered prisoners one free five-minute phone call per week. All other calls to loved ones are subject to the usual fees associated with making collect calls. These fees can be as high as ten dollars for a fifteen-minute phone call for someone with a local area code and even higher for someone without one.

27. The Jail also offers video-visits to prisoners through the tablets available on their housing units. There are a limited number of tablets on each housing unit. The video-visits are reliant on availability of a strong internet connection at the Jail and for the person receiving the call. It is

⁵ *Broome County Corrections Officer Tests Positive for COVID-19*, Binghamton Homepage, March 31, 2020, <https://www.binghamtonhomepage.com/local-news-2/broome-county-corrections-officer-tests-positive-for-covid-19/> (last accessed April 2, 2020).

⁶ Gabrielle Fonrouge, *Upstate inmates forced to clean up after Coronavirus patients: “We’re Scared”*, April 17, 2020, New York Post, available at: <https://nypost.com/2020/04/17/ny-inmates-forced-to-clean-up-after-coronavirus-patients/>

⁷ Jillian Forstadt, *Broome Jail Offers \$10 Incentive to Incarcerated People Who get Vaccinated*, WSKG, April 6, 2021, available at: <https://wskg.org/broome-jail-offers-10-incentive-to-incarcerated-people-who-get-vaccinated/>

⁸ Chris Gelardi, “They Didn’t Test Anybody”: Jails Across New York Administer Alarming Few Tests During Omicron Surge, New York Focus, February 2, 2022, available at: <https://www.nysfocus.com/2022/02/02/covid-testing-new-york-jails/>

⁹ *Id.*

not uncommon for people to lose connections during their video visits. Video visits, while more affordable than phone calls, still cost \$3.50 for fifteen-minutes.

28. The Broome County Sheriff's Office makes a significant amount of money from charging prisoners for telephone and video-visits. In 2018 they made over \$25,000 per month from phone calls alone.¹⁰

29. Because of the cost of video-visits and phone calls, indigent families are often left with no option to regularly speak with their loved ones held at the Jail.

Denying In-Person Visitation Has a Negative Effect on Prisoners, Their Families and The Safety of Correctional Facilities

30. The denial of visitations to prisoners have a "detrimental effect on spousal and parent child relationships." *Cooper v. Morin*, 49 N.Y.2d 69, 80 (1979). The Court of Appeals noted that although this conclusion is obvious it is also supported by numerous scholarly books and articles. (*See Cooper, supra.*) (gathering sources).

31. Decades of research since the Court of Appeal's decision in *Cooper v Morin* verifies the conclusion the Court found was obvious: regular in-person visitations have substantial benefits for prisoners and their families.

32. A 2008 study examined visitation data from over 7,000 prisoners released from the Florida Department of Corrections. The study found that each visit a prisoner received lowered their odds of two-year reincarceration by 3.8 percent.¹¹ A 2011 Minnesota study reached a similar conclusion. Among people who received visits during their incarceration, felony re-

¹⁰ William Martin, "County Kickbacks and Phone Call Costs from Hell", June 18, 2019, available at: <http://www.justtalk.blog/index.php/2019/06/18/county-kickbacks-and-phone-call-costs-from-hell/>

¹¹ Bales, William D., and Daniel P. Mears. 2008. "Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?" *Journal of Research in Crime and Delinquency* 45(3):287-321.

convictions were 13 percent lower and revocations for technical violations of parole were 25 percent lower, compared to people who did not receive visits.¹²

33. Allowing visitation also increases the safety and security of correctional facilities.

Prisoners who regularly receive visits are less likely to violate facility rules.¹³ They are also less likely to assault other prisoners and corrections staff.¹⁴

34. Research suggests that families of prisoners also benefit greatly from in-person visitations showing improved mental health measures and having a higher probability of remaining together as a family after release.¹⁵ This is especially true for children of prisoners, who are often the hidden victims of incarceration.

35. Children with incarcerated parents are at increased risk for mental health issues, substance abuse disorders, and poorer educational outcomes than their peers without an incarcerated parent.¹⁶ Regular visitation with an incarcerated parent has been recognized to mitigate some of these risks.¹⁷ Additionally, incarcerated parents who regularly receive visits with their children have lower rates of recidivism.¹⁸

36. A survey of all fifty states prison systems and the Federal Bureau of Prisons found “that frequent high-quality visitation can reduce prison violence, maintain family bonds, break the

¹²Duwe, G. & V. Clark (2011). The Effects of Prisoner Visitation on Offender Recidivism. *Criminal Justice Policy Review* 24(3): 271-296. Available at: https://mn.gov/doc/assets/11-11MNPrisonVisitationStudy_tcm1089-272781.pdf

¹³ Sarah Tahamont, The Effect of Visitation on Prison Misconduct, University of California, Berkeley Goldman School of Public Policy, available at: https://s3.amazonaws.com/videohall-prod/7bb1e48a587657996a02f94cfc23c305/system/igert/igert2011/presentations/101/posters/sarahdraft_final_IGERT_poster_04132011.pdf?1302896373

¹⁴ *Id.*

¹⁵ Emily Mooney and Nila Bala, The Importance of Supporting Family Connections to Ensure Successful Re-Entry, R Street, October 2018, available at: <https://www.rstreet.org/wp-content/uploads/2018/10/Final-Short-No.-63-1.pdf>

¹⁶ Lindsey Cramer et. al, *Parent-Child Visiting Practices in Prisons and Jails*, URB. INST. 1, 1 (2017), urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails.pdf (last visited February 15, 2020)

¹⁷ *Id.*

¹⁸ *Id.* at 8.

intergenerational cycle of incarceration, and smooth the reentry process, thereby reducing recidivism rates.”¹⁹

37. Video visitation can be an enormous benefit to a prisoner’s quality of life when utilized properly by a correctional facility. However, the technology required and the cost of the calls presents an insurmountable barrier for some families. Further, seeing someone on a screen is not an adequate replacement for seeing someone in person. For these reasons the American Correctional Association,²⁰ American Bar Association²¹ and the National Institute on Corrections recommend video-visits should be used to supplement, and not replace, in-person visitation.²²

38. Correctional facilities that stopped in-person visitation in favor of all video visits have documented an increase in violence and other disciplinary infractions.²³

Correctional Facilities Can Safely Provide Prisoners In-Person Visits Despite the Ongoing Pandemic

39. Infectious diseases are more likely to spread in congregate environments such as jails and nursing homes – places where people live, eat, and sleep in close proximity.²⁴

¹⁹ Chesa Boudin et al., *Prison Visitation Policies: A Fifty-State Survey*, 32 Yale L. & Pol’y Rev. 149, 151-53 (2013).

²⁰ Lucius Couloute, *American Correctional Association says that video visitation should not replace in-person visits*, Prison Policy Initiative, April 24, 2017, available at: https://www.prisonpolicy.org/blog/2017/04/24/aca_video_policy/

²¹ American Bar Association: Criminal Justice Standards on the Treatment of Prisoners, Section 23-8.5(e), available at: https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners/

²² *Video Visiting in Corrections: Benefits, Limitations, and Implementation Considerations*, U.S. Dep’t of Justice National Institute of Corrections, at 15-19, available at: <https://dept.camden.rutgers.edu/nrccfi/files/NIC-Video-Visiting-Guide.pdf>

²³ *To What End? Assessing the Impact of the Knox County Jail’s Ban on In-Person Visits*, Face to Face Knox County, January 29, 2018, available at: <https://drive.google.com/file/d/1H4JdRulGhQ9tKeMKUxsimxLsyE5nYIMF/view>; Emily Widra, *Travis County, Texas: A Case Study on Video Visitation*, Prison Policy Initiative, April 18, 2016, available at: https://www.prisonpolicy.org/blog/2016/04/18/travis_video_casestudy/

²⁴ See *Basank v Decker*, No. 20-cv-2518, 2020 U.S. DIST LEXIS 53191 *8 (S.D.N.Y. Mar. 26, 2020) (crediting Dr. Jaimie Meyer’s opinion that “[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful” (emphasis added)); *United States v. Stephens*, No. 15-cr-95 (AJN), 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (“[I]nmates may be at a heightened risk of contracting COVID-19 should an outbreak develop.”); see also Laura M. Maruschak et al. (2015). *Medical Problems of State and Federal Prisoners and Jail Inmates*, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfjji1112.pdf>

40. The Centers for Disease Control’s (“CDC”) position recognizes that prisoners and prison staff are at higher risk of contracting COVID-19 because a correctional facility is a congregate environment where social distancing is not always possible.²⁵

41. As a pre-cautionary measure shortly after the start of the pandemic DOCCS and all local New York correctional facilities suspended in-person visitation.

42. In the months following the onset of the COVID-19 pandemic, studies began to show the risk of transmission can be greatly reduced if appropriate safety precautions are followed. The CDC found that wearing a mask significantly reduces the risk of transmission of COVID-19.²⁶ One such study found that a correctly worn surgical mask can reduce the risk of viral transmission by an infected person by 95%.²⁷

43. According to the CDC --although breakthrough cases are possible-- getting vaccinated is the best way to slow the spread of COVID-19.²⁸

44. In addition to masking the CDC recommends the following to stop the spread of COVID-19: (1) getting vaccinated; (2) social distancing; (3) regularly washing your hands; (4) testing; (5) avoiding crowded spaces with poor ventilation and (6) monitoring your daily health for symptoms.²⁹

²⁵Centers for Disease Control and Prevention, “For People Living in Prisons and Jails”, February 15, 2022, available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/living-prisons-jails.html>

²⁶Centers for Disease Control and Prevention, “Science Brief: Community Use of Masks to Control the Spread of SARS-Cov-2, December 6, 2021, available at: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

²⁷ Catching, A., Capponi, S., Yeh, M.T. *et al.* Examining the interplay between face mask usage, asymptomatic transmission, and social distancing on the spread of COVID-19. *Sci Rep* 11, 15998 (2021). <https://doi.org/10.1038/s41598-021-94960-5>

²⁸Centers for Disease Control and Prevention, The Possibility of COVID-19 after Vaccination: Breakthrough Infections, Dec. 17, 2021, available at: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html>

²⁹ Centers for Disease Control and Prevention, “How to Protect Yourself and Others”, February 25, 2022, available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

45. Planning and implementing safety precautions has allowed for visitations in congregate settings to resume. The CDC and Department of Health and Human Services have set out guidance for nursing homes--which house people inherently at high risk for death or serious illness from COVID 19-- to safely resume visits.³⁰ Similarly the CDC recommends visitors to correctional facilities undergo a health screening and wear a mask for the duration of the visit.³¹

46. DOCCS re-opened in person visitation at all their facilities on August 5, 2020 after initially suspending visitation at the start of the pandemic. Since re-opening in-person visitation DOCCS has implemented a variety of the CDC's recommended safety precautions to protect the prisoners, visitors, and staff.³²

47. In continuing visitations with safety modifications in place DOCCS sought to balance "the importance of family and visitation" with "the critical need to continue protecting staff and the incarcerated population within [their] facilities."³³

48. Currently all visitors to DOCCS' correctional facilities are given an at home test when they enter the facility.³⁴ Every visitor must show the negative test to the corrections officer on duty in order to be processed for a visit.³⁵

49. DOCCS has adopted the following safety protocols, *inter alia*: (1) visiting rooms operate at half capacity to facilitate social distancing; (2) all visitors must wear masks; (3) all visitors

³⁰ Department of Health and Human Services: Center for Medicare and Medicaid Services, Nursing Home Visitation COVID-19, March 10, 2022, available at: <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>

³¹ Centers for Disease Control and Prevention, "For People Living in Prisons and Jails", February 15, 2022, available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/living-prisons-jails.html>

³² New York State DOCCS, "DOCCS COVID-19 Report", March 25, 2022, available at: <https://doccs.ny.gov/doccs-covid-19-report#:~:text=Each%20visit%20will%20be%20limited,with%20no%20cross%20visiting%20allowed.>

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

have their temperature checked and complete a questionnaire; and (4) all tables, chairs and vending machines in the visiting area are regularly disinfected.³⁶

50. On June 25, 2021 Riker's Island and other New York City jail facilities re-opened in person visitation. The New York City Department of Corrections made modifications to their usual visitation procedures to protect the health and safety of the corrections officers and prisoners in the facility.³⁷

51. The New York City correctional facilities have instituted the following safety protocols for in-person visits: (1) all visitors are screened and their temperature taken prior to their entrance into the facility; (2) social distancing must be maintained at all times other than a short greeting in the beginning of the visit; and (3) masks must be worn at all times.³⁸

52. Local county jails throughout New York have also re-opened in-person visitation with safety precautions in place.

53. Schenectady County Jail resumed in-person visitation on March 13, 2022. All in-person visitations at the facility are non-contact visits. Visitors entering the facility must undergo a health screening and are required to wear a mask at all times throughout the visit.³⁹

54. Westchester County Jail resumed non-contact visitation on March 14, 2022. All visitation must be scheduled in advance and prisoners are limited to one forty-five-minute visit per week. All visits are non-contact and take place in secure booths. Visitors are required to undergo a health screening prior to the visit and must wear a mask at all times within the facility.⁴⁰

³⁶ *Id.*

³⁷ New York City Department of Corrections, "Family Visits" available at: https://www1.nyc.gov/site/doc/inmate-info/Revised_Family_Visit.page.

³⁸ New York City Department of Corrections, "Visit a Person in Custody", available at <https://www1.nyc.gov/site/doc/inmate-info/In-PersonVisits.page>

³⁹ Schenectady County, "Corrections" available at: <https://www.schenectadycounty.com/sheriff/corrections>

⁴⁰ Westchester County Department of Correction, "Limited Family Visitation to Resume", available at: <https://correction.westchestergov.com/visitation-to-resume>

55. Yates County Jail resumed in-person visitation on April 2, 2022. All visits are non-contact. Yates County modified their normal visitation area with plexiglass screening between the visitor and prisoner. Visitors are required to undergo a health screening prior to the visit and must wear a mask at all times within the facility. Visits are limited to thirty minutes.⁴¹

56. Monroe County Jail resumed in-person visitation on February 21, 2022. Visitors are required to pre-register for their visit. Visits are limited to one visit per week per prisoner and each visit is limited to thirty minutes. Masks must be worn at all times during the visit.⁴²

57. Oneida County Jail resumed in person visitation in July 2021. All visitors are required to pre-register for a visit and undergo a health screening upon entering the facility. Masks must be worn at all times within the facility.⁴³

58. Chautauqua County Jail resumed in person visitation on February 16, 2022. All visitors must pre-register for their visit and prisoners are limited a single one hour visit per week. Visitors must undergo a health screening upon entering the facility and wear a mask for the duration of the visit.⁴⁴

59. Dutchess County Jail requires visitors to undergo a health screening and wear a mask at all times in the facility. Physical contact between the prisoner and visitor is not allowed.⁴⁵

⁴¹ Lucas Day, Finger Lakes Daily News, "Visitations at the Yates County Jail to Resume in April", March 22, 2022, available at: <https://www.fingerlakesdailynews.com/2022/03/22/1376528/>

⁴² Monroe County, "Monroe County Jail Online Visitation Request", available at: <https://www.monroecounty.gov/sheriff-jail-visitation-form>

⁴³ Oneida County Sheriff's Office, "Inmate Visitation" available at: <http://oneidacountysheriff.us/correctiondivision/visitation>; Visitation to Resume at Oneida County Correctional Facility, WKTV, January 12, 2022, available at: https://www.wktv.com/archive/visitation-to-resume-at-oneida-county-correctional-facility/article_9325f400-8ad8-5e00-925e-9ca27312954d.html

⁴⁴ Chautauqua County, Sheriff's Office Website, available at: <https://www.sheriff.us/visitation>

⁴⁵ Dutchess County, Pandemic Visit Session Guidelines, May 1, 2022, available at: <https://www.dutchessny.gov/Departments/Jail/Jails-General-Visitation-Rules.htm>

60. Suffolk County Jail has allowed non-contact in-person visitations in place since August 2021.⁴⁶

61. Nassau County Jail reopened in-person visitation on June 3, 2021. Visitations must be scheduled in advance and a mask must be worn by all visitors.⁴⁷

62. The above listed jails have all instituted a variety of CDC recommended safety protocols that have allowed them to safely resume in-person visits while respecting prisoners' constitutional right to visits.

Justice and Unity for the Southern Tier

63. Justice and Unity for the Southern Tier (JUST) is a 501(c)3 not for profit group committed to ending mass incarceration and mass policing in the southern tier. Their work focuses predominantly on supporting people incarcerated at the Broome County Jail.

64. JUST has a jail visiting program where volunteers meet with people held at the Jail. The visiting program supports JUST's advocacy efforts by exposing the abuses suffered by people held at the Jail.

65. Beyond supporting their advocacy efforts, the goal of the visitation program is to demonstrate to prisoners that they have support in the community, and will continue to have that support once they are released. It allows prisoners who may not otherwise receive visits to get off their housing unit and have someone to speak with for an hour or two each week.

⁴⁶Suffolk County Sheriff's Office, Visiting with Incarcerated People at the Suffolk County Sheriff's Office, available at: <https://www.suffolkcountysheriffsoffice.com/visiting-information>

⁴⁷Nassau County Sheriff's Department, Inmate Population and Visiting Public, available at: <https://www.nassaucountyny.gov/DocumentCenter/View/32722/Sheriffs-Letter-to-Inmates-Re-Opening-of-Visitation-Unit-05-24-2021?bidId>

66. JUST's visiting program has been instrumental in shining a light on the abuses and medical neglect prisoners face at the Jail.⁴⁸ Since 2011 several people have died at the Jail after allegedly suffering inadequate medical care.⁴⁹ JUST gathered the information in support of these advocacy efforts through their visitation program.

67. They have also recently advocated for changes for the way women and in particular pregnant women are treated at the Jail.⁵⁰ JUST was actively involved in criticizing the Jail's response to the COVID 19 pandemic and advocating for the release of at-risk prisoners.⁵¹ Despite their limited resources JUST has been an invaluable resource to those inside the Jail throughout the pandemic. In the case of some indigent prisoners JUST volunteers have been their only meaningful access to the outside world.

68. JUST's visitation program also assists prisoners' re-entry into the community. JUST helps connect prisoners with resources they can access upon their release from the Jail, including access to social services, medical care, food, clothing and shelter.

69. JUST's advocacy has exposed abuses that have eventually been the subject of lawsuits including: juvenile solitary confinement,⁵² discrimination against transgender people,⁵³ and brutality against prisoners at the hands of corrections officers.⁵⁴

⁴⁸ William Martin, When Jail Becomes a Death Sentence, Jacobin, Feb. 27, 2017, available at <https://www.jacobinmag.com/2017/02/jail-deaths-broome-county-alvin-rios-salladin-bartonupstate-new-york-prisons/>

⁴⁹ Anthony Borrelli, Broome County jail deaths put spotlight on inmate medical care Pressconnects, Mar. 3, 2020, available at <https://www.pressconnects.com/story/news/local/2020/03/03/broome-county-jail-inmatesdead-after-lack-medical-health-care-ny-new-york/4857588002/>

⁵⁰ See Phoebe Taylor-Vuolo, Activists allege mistreatment of women, pregnant people in Broome County, WSKG, Jan. 28, 2022, available at <https://wskg.org/broome-county-jailallegations/>

⁵¹ Daniel Gabel, Coverups and COVID-19 in the Broome County Jail, May 21, 2021 available at: <https://www.justicest.com/index.php/cover-ups-and-covid-19-in-the-broome-county-jail/>

⁵² *A.T. v. Harder*, 298 F. Supp. 3d 391 (N.D.N.Y. 2018)

⁵³ *Makyla Holland v. Broome County*, No. 22-cv-297, (N.D.N.Y.)

⁵⁴ *Vega v. Broome Cnty.*, No. 21-cv-00788 (N.D.N.Y.).

70. The suspension of visitation at the Jail due to the COVID-19 pandemic has had a devastating effect on JUST's visitor program. The number of prisoners they can connect with has dropped significantly. They have to resort to phone calls, video-visits, and messaging. Each of these methods of visitation costs money and as a small not for profit organization JUST does not have always the funds available to answer each request for visit.

71. Without in-person visitation JUST was forced to divert a significant amount of its small resources to pay to maintain its prisoner visitation program.

72. JUST has made several requests to the Broome County Sheriff's Department and the Broome County government for information on when in-person visitation will resume. They have received no information on a re-opening date.

Megan Pond

73. Ms. Pond's boyfriend J.L. is a pre-trial detainee at the Jail. Ms. Pond and J.L. have a four-and-a-half-month-old baby boy together. He has been held at the jail for approximately four months.

74. Due to Defendant Harder's ban on all in-person visitation Ms. Pond has not been able to bring J.L.'s son to visit him at the jail.

75. Ms. Pond has five children and uses the money she earns from work to support them. She does not have disposable income to pay the costs associated for phone calls or video visits. As a result, Ms. Pond and J.L. have only spoken a few times since he became incarcerated and only for short periods of time.

76. The lack of in-person visitation has strained Ms. Pond and J.L.'s relationship. She wants to be there for him to support him with everything he is going through. But without in-person

visits she does not feel she can adequately support and be there for him. Also, she wants her son know his father and give J.L. the opportunity to bond with his son.

77. Ms. Pond's brother is incarcerated at the Tioga County Jail. She knows they are allowing in-person visitation with safety precautions. She does not understand why she cannot see J.L. if she follows similar safety precautions.

CLASS ALLEGATIONS

78. Pursuant to CPLR § 901, Plaintiff Megan Pond seeks to represent a class of individuals who are friends and family members of people who are, or will be, pre-trial detainees incarcerated in the Broome County Jail.

79. The members of this Class are so numerous as to render joinder impracticable. As of April 2022 there was on average 318 prisoners held at the Jail each with friends or family.

80. There are questions of law and fact common to the Class that predominate over questions affecting only individual members, and the claims of the parties are typical of the Class claims. Specifically, all members of the Class are loved ones of people who are, or will be, incarcerated in the Broome County Jail, facing a common issue of not having access to in-person visitation. The common legal issue among all Class members is whether Defendant's policy of not allowing in-person visitation violates Article I §§ 6 and 8 of the New York State Constitution.

81. The named Plaintiff Megan Pond will fairly and adequately protect the Class because she seeks the same relief as all Class members—to be able to visit their loved ones at the Broome County Jail.

82. Finally, a class action is superior to other available methods for the fair and efficient adjudication of this matter because it will promote judicial economy by avoiding multiple

suits that would raise the same issues.

FIRST CAUSE OF ACTION

Violation of Article I § 6 of the New York State Constitution

83. Plaintiffs incorporate by reference each preceding allegation as if fully set forth herein.

84. Article I § 6 of the New York State Constitution mandates that “[n]o person shall be deprived life, liberty or property without due process of law”.

85. Plaintiffs have a fundamental due process right to maintain relationships and associate with their friends, family, and other people held at the Broome County Jail.

86. Defendants through their blanket prohibition on all in-person visits unconstitutionally burdens Plaintiffs fundamental Due Process rights as guaranteed by Article I § 6 of the New York State Constitution.

SECOND CAUSE OF ACTION

Violation of Article I § 8 of the New York State Constitution

87. Plaintiffs incorporate by reference each preceding allegation as if fully set forth herein.

88. Plaintiffs have the right to associate with their incarcerated loved ones and people they wish to assist through their advocacy efforts.

89. Defendants through their blanket prohibition on all in-person visits unconstitutionally burdens Plaintiffs’ right to associate with people held at the Broome County Jail as guaranteed by Article I § 8 of the New York State Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Court:

- a) Grant preliminary and permanent injunctive relief pursuant to Article 63 of the C.P.L.R.
requiring the Defendants to immediately re-open in-person visitation for pre-trial
detainees, with appropriate safety protocols to protect the visitors, staff and prisoners;
- b) Issue a declaratory judgment declaring Defendant's policy and practice of failing to offer
in-person visitation to pre-trial detainees violates the New York Constitution
- c) Certify this case as a class action pursuant to Article 9 of the C.P.L.R.;
- d) Award reasonable attorney's fees to Plaintiffs for the prosecution of this action pursuant
to C.P.L.R. § 909;
- e) Award costs and disbursements of this action; and
- f) Granting such other and further relief as the Court may deem just and equitable.

Date: May 11, 2022

Respectfully submitted,

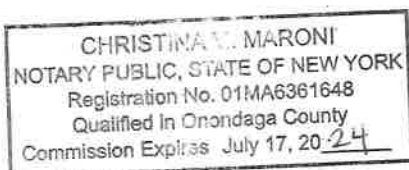
/s/ Joshua Cotter
**LEGAL SERVICES OF
CENTRAL NEW YORK, INC.**
Joshua T. Cotter
Attorneys for the Plaintiff
221 South Warren Street, 3rd Fl.
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(315)-703-6579

VERIFICATION

William Martin, a founder and current member of Justice and Unity for the Southern Tier (JUST) states that he has read the foregoing complaint and the facts alleged are true to his own knowledge, except for those portions specifically alleged by other plaintiffs and those alleged on information and belief and as to those matters he believes the information to be true.



Dated: May 6, 2021
Binghamton, New York



VERIFICATION

I Joshua Cotter, an attorney admitted to practice law in the State of New York, states that I have read the foregoing complaint and that same is true to my own knowledge, except for those portions stated on information and belief, which I believe to be true. I make this verification because Plaintiff Megan Pond lives outside of the county in which my office is located.

/s/Joshua Cotter

Dated: May 11, 2022

Syracuse, New York